IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 446 OF 2006

Shivshankar @ Tony Dashrath Singh ....Applicant.

V/s

The State of Maharashtra
Through Bhiwandi Taluka
Police Station Bhiwandi. ....Respondent.

Mr. A.P. Mundargi i/b Y.P. Runwal for the applicant.
Mr. Y.S. Shinde, APP for the State.

CORAM: V.M. KANADE, J.

DATE: 29th March, 2006

P.C.:

1. Heard the learned Counsel for the applicant and the learned APP for the State.

2. The applicant was arrested on 19/10/2005 in connection with C.R. No. I 129 of 2005 for the offence punishable under sections 302, 392, 396, 397, 201, 203 read with 120B and 34 of the Indian Penal Code.

3. The prosecution case is that the applicant has given certain amount to his friend and though the applicant had demanded the return of the said amount, his friend Sachin Nath Prasad Singh did not return it and was continuously dodging the applicant. The

prosecution case, therefore, is that the applicant and the other accused hatched a conspiracy pursuant to which the applicant took his friend Sachin near the petrol pump. While they were standing on the road, three people came in rickshaw. They threw chilly powder in their eyes, removed mobile phone which was in possession of the deceased and also removed cash and other valuables and sat in rickshaw and went away. It is the prosecution case that the applicant was a part of the said conspiracy and he, therefore, made a telephone call from his mobile which was snatched from the deceased by other accused and similarly one call was received on the mobile after the incident had taken place. The prosecution case is that in order to confuse the police, the applicant himself lodged a complaint with the police which was recorded as FIR and the investigation commenced. Sachin Nath Prasad Singh, the person who was assaulted, succumbed to the injuries and, therefore, offence under section 302 read with section 120(B) of the Indian Penal Code was registered. During the pendency of the investigation, according to the prosecution, after the other assailants were arrested, the police came to know that the applicant was the main conspirator and he was arrested and his mobile phone was recovered from his house. The police also traced the telephone bills of

the accused - applicant herein, as also of the deceased and this showed that there was exchange of telephone calls on these two phones before the alleged incident had taken place and after the commission of the offence, indicating that the applicant knew that the mobile which was snatched from the deceased was with other co-accused. The police also recorded the statement of watchman who had stated that the present applicant had met him one day prior to the incident and had told him to state that he had borrowed Rs 2000/- from the present applicant if an inquiry was made by any person in that regard.

4. The learned Counsel for the applicant submitted that the only material to implicate the present applicant was entries in the mobile bill out of which two entries were made prior to the incident and, therefore, were not of any assistance to the prosecution as the applicant was a friend of the deceased. So far as the two entries which are noticed after the incident are concerned, it does not conclusively show that the applicant had a knowledge that the mobile was with the other co-accused. It is submitted that so far as the statement of Chandra Shekar Kanta Singh is concerned, it does not take the prosecution case any further. He submitted that the

charge-sheet has been filed. The applicant has a fixed place of residence and was not likely to abscond.

5. The learned APP, on the other hand, submitted that the applicant was involved in an offence punishable under section 302 and that the said offence was committed in a diabolical manner and, therefore, the applicant was not entitled to be released on bail.

6. In my view, since the only evidence at this stage against the applicant is in the form of the telephone record, that by itself does not conclusively prove the involvement of the present applicant in the said crime. Thus, there is every possibility that the applicant may not be convicted in the case. Since the trial is not likely to begin within a reasonable time, it will be unfair to keep the applicant behind the bars indefinitely, particularly considering the nature of evidence which has been collected against him by the prosecuting agency.

7. Under these circumstances, the applicant be released on bail in the sum of Rs 10,000/- with one or two local sureties in the like amount. The applicant shall report to Bhiwandi Taluka Police Station once in

a month.

8. The applicant shall not threaten any of the witnesses or try to tamper with the evidence. If any complaint is received by the Investigating Officer to that effect, liberty is given to the Public Prosecutor to apply for cancellation of bail.

9. The Trial Court shall not be influenced by any observations made by this Court in this Order and it may not be construed to mean as an expression of opinion on merits of the case and shall decide the case on its own merits and in accordance with law. The said observations have been made only while considering the submissions which are made by the learned Counsel appearing for either side.

10. Application is accordingly disposed of.

V.M. KANADE, J.